



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 14, 1998

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR98-0120

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111595.

The City of Houston (the "city") received requests from four individuals for a variety of information regarding the disposition of the Public Integrity Review Group ("PIRG") and internal affairs division ("IAD") investigation reports concerning allegations against Andy Kahan. In response to the requests, you submitted to this office for review the information which you assert is responsive. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

As a preface to our discussion, we note that this office has previously addressed certain related matters. In Open Records Letter No. 97-1155 (1997), our office specifically addressed the release of the Public Integrity Review Group ("PIRG") investigation reports. In Open Records Letter No. 97-1814 (1997), this office considered whether the IAD investigation files were subject to disclosure. In the two previous requests for rulings, the city represented that a criminal investigation was on-going.

First, we address your assertion that section 552.108 of the Government Code excepts the requested information in its entirety. The Seventy-fifth Legislature amended section 552.108 of the Government Code to read as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its

face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1).

In the two previous requests for rulings, the city represented that a criminal investigation was on-going. We note that in this instance, you advise this office that "the investigation at issue did not result in criminal charges, [therefore] there have been no convictions or deferred adjudications as a result of the investigation." Further, you have also submitted an affidavit from Robert J. Rohling, an officer with the Houston Police Department, to inform us that the IAD investigation which has incorporated "the entire" PIRG investigation "did not result in the filing of criminal charges." The submitted information also indicates that no charges have been filed in connection with the investigation at issue.

Section 552.108(a)(2) provides that information is excepted from disclosure if "it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." Based on your representations, we believe that the submitted records deal with the detection and investigation of a possible crime. Because the completed investigation did not result in a conviction or deferred adjudication, the information may be withheld from disclosure pursuant to section 552.108(a)(2). We conclude that the department has shown the applicability of section 552.108(a)(2) to the submitted information.

We note, however, that you must provide the requestor with the basic front page offense report information in the submitted documents, including a detailed description of the offense. Section 552.108(c) provides that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Front page offense report information is the basic information required to be disclosed. See generally *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976).¹ Therefore, we conclude that, except for basic front page information, the requested records may be withheld under section 552.108 of the Government Code.²

¹The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*. For your convenience, we have enclosed a summary of the type of information that is generally considered to be public and must be disclosed.

²We note, however, that you may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

Next, we must address whether section 552.101 of the Government Code excepts some of the submitted information, not covered by section 552.108, from required public disclosure. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that the information submitted to us for review is protected by the doctrine of common-law privacy as applied in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Section 552.101 encompasses both common-law and constitutional privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation*. Information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Additionally, this office has found that the following types of information are excepted from required public disclosure under constitutional³ or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Specifically, when the information relates to a sexual assault or other sex-related offense, any information which either identifies or tends to identify the victim must be withheld under the common-law right of privacy, in conjunction with section 552.101 of the Government Code. *See* Open Records Decision Nos. 339 (1982), 205 (1978).

³Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The scope of information protected under constitutional privacy is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

We have reviewed your submissions and your markings. As noted above most of the submitted records may be withheld pursuant to section 552.108.⁴ Further, in this instance, the basic front page offense report information which identifies a victim of sexual assault must be withheld under section 552.101 in conjunction with the common-law right to privacy. *Id.* Consequently, in order to clarify your questions as for your markings, we note that to the extent the front page offense report information includes information subject to privacy, specifically information which identifies or tends to identify the victim of a sexual assault or other sex-related offense, the city must withhold all such information.

Finally, as indicated in our discussion above, information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See Industrial Foundation* at 668-685. In *Houston Chronicle*, the court held that "personal history and arrest records" were excepted from required public disclosure. These records primarily contained criminal history record information ("CHRI"), such as information regarding previous arrests and other data relating to suspected crimes, including the offenses, times of arrest, booking numbers, locations, and arresting officers. *Houston Chronicle*, 531 S.W.2d at 179. The court held that release of these documents would constitute an unwarranted invasion of an arrestee's privacy interests. *Id.* at 188. Consequently, if the submitted offense reports' front page information compilations include information subject to privacy, the city must withhold that information.

Additionally, to the extent the requested records may contain CHRI, we must note that the privacy interest in CHRI has also been recognized by federal regulations which limit access to criminal history record information that states obtain from the federal government or other states.⁵ *See* 28 C.F.R. § 20; *see also United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (finding criminal history information protected from disclosure under Freedom of Information Act, 5 U.S.C. § 552, and Privacy Act of 1974, 5 U.S.C. § 552a). Thus, if any of the information was generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"), the information must not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies).

⁴We note that in Open Records Decision No. 127 (1976), this office concluded that "the identification and description of witnesses" is information which is protected by section 552.108 of the Government Code.

⁵Section 552.101 encompasses information protected by other statutes.

Therefore, any CHRI that falls within the ambit of these state and federal regulations must be withheld from the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large initial "S" and "H".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 111595

Enclosures: Submitted documents and audiotapes
Summary of Open Records Decision No. 127 (1976)

cc: Ms. Jocelyn Lane
Managing Editor
KRIV-TV
3935 Westheimer Road
Houston, Texas 77027
(w/o enclosures)

Mr. Jerry Urban
Reporter
Houston Chronicle
P.O. Box 4260
Houston, Texas 77210
(w/o enclosures)

Mr. Stephen Dean
News Reporter
KTRH News Radio
510 Lovett Blvd.
Houston, Texas 77006
(w/o enclosures)

Ms. Dianne Clements
President
Justice for All
P.O. Box 55159
Houston, Texas 77255
(w/o enclosures)